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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,016	03/23/2001	Betsy P. Colwell	02200-1	9104

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Michele J. Young
Salter & Michaelson
321 South Main Street
Providence, RI 02903

EXAMINER

GRILES, BETHANY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/816,016

Applicant(s)

COLWELL, BETSY P.

Examiner

Bethany L. Griles

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/24/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-23 and 25-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 7, 12, 19, 21-23, 26-32, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) 2-5, 8-20, 33-36, 39, and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed October 24, 2002 with regard to claims 27-32, 37 and 38 have been fully considered but they are not persuasive. The cover of the feeder disclosed by Duncraft has a smooth surface.

The indicated allowability of claims 1, 7, 12, 19, 21, 22, 23, and 26 is withdrawn in view of the newly discovered reference(s) to Miller and Prowinsky. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-32, 37, 38 rejected under 35 U.S.C. 102(b) as being anticipated by Wild Birds Forever website (www.wildbirdsforever.com).

Regarding claim 27, Duncraft discloses a selective housing having at least one sidewall and base (see first fig); a seed holder contained within the selective housing (see first fig).

Regarding claims 28 and 32, Duncraft discloses a selective housing having a cylindrical sidewall including apertures ranging in width from 1.3 to 1.7 inches, a removable top, a cylindrical seed holder, a hanger attached, and that the top is in direct contact with the seed holder. (see item #18002 on website).

Regarding claim 28, Duncraft discloses that the housing includes a base (see fig).

Regarding claim 29, Duncraft discloses that the seed holder includes a base (see fig).

Regarding claim 30, Duncraft discloses the hanger is attached to the top (see fig)

Regarding claim 31, Duncraft discloses that the hanger is attached to the seed holder (see fig).

Regarding claim 37, Duncraft discloses a clamp (see fig).

Regarding claim 38, Duncraft disclosea a clamp above the seed holder (see fig).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 7, 12, 19, 21, 22, 23, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prowinsky US3301217 in view of Miller US4030451.

Regarding claim 1, Prowinsky discloses a selective bird feeder, comprising: a selective housing having at least one sidewall and a base; a seed holder 30 contained within the selective housing and including a base 34; a fastening member 35 constructed and arranged to removably secure the base of the selective housing to the base of the seed holder; a top 20 adjacent an upper edge of the selective housing 30.

Prowinsky does not disclose that upon removal of the fastening member, the selective housing and the base of the selective housing are disconnected from the seed holder such that a user can remove the selective housing and the base of the selective housing from engagement with the base of the seed holder.

Miller discloses that the selective housing 14 and the base of the selective housing 24 are disconnected from the seed holder such that a user can remove the selective housing 14 and the base 24 from engagement with the seed holder 12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Miller to the invention of Prowinsky in order to make the device more accessible and easier to load food into the unit.

Regarding claim 7, Prowinsky discloses the selective bird feeder of claim 1, wherein the base 34 of the selective housing is substantially solid.

Regarding claim 12, Prowinsky discloses the selective bird feeder of claim 1, wherein the top 14 of the selective housing is substantially solid.

Regarding claim 19, Prowinsky discloses selective bird feeder of claim 1, wherein the removable top 14 is spaced apart from the seed holder 12.

Regarding claim 21, Prowinsky disclose the selective bird feeder of claim 19, wherein the seed holder includes a cap 20, and further comprising a space 21 between the removable top and the cap.

Regarding claims 22 and 23, Prowinsky discloses the selective bird feeder of claim 21, wherein the spacing between the cap and the removable top is adjustable (see figure 2 of Prowinsky).

Regarding claim 26, Prowinsky discloses the selective bird feeder of claim 21

Prowinsky does not disclose a hanger passing through the top of the feeder.

Miller discloses a hanger 46 passing through the top of the device 14.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Miller to the invention of Prowinsky in order to make the device more versatile and able to be mounted in different locales.

Allowable Subject Matter


Claims 2-5, 8-20, 33-36, 39, and 40 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703.306.4196.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.5771.


Bethany L. Griles
Examiner
Art Unit 3643

blg

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A handwritten signature in black ink, appearing to read "Peter M. Poon".

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

9/10/04